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Paper No. 8
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AUG 29 2003

OFFICE OF PETITIONS

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In re Application of
Duffy et al. :
Application No. 09/498,794 :
Filed: February 1, 2000 :
Attorney Docket Number: LEW16,833-1:

DECISION GRANTING
PETITION

This is a decision on the Request for Reconsideration of Dismissed Petition to Accept Missing Item in New Application under 37 CFR 1.182, requesting the application be accorded a filing date February 1, 2000, including page 7 of the specification.

The petition is granted.

The application was filed on February 1, 2000. However, on April 4, 2000, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (hereinafter "Notice"), indicating, that the application had been accorded a filing date of February 1, 2000, and advising applicant that page 7 of the specification appeared to have been omitted.

Background

In response, on November 13, 2002, Petitioner filed a petition wherein Petitioner averred that page 7 of the specification was filed with the application. The contention was supported by the Declaration Kent N. Stone, and a patent application mailing card which putatively indicate that 29 pages of specification were filed on February 1, 2000. However, the application file did not contain a copy of a date stamped filing receipt¹. That petition was dismissed without prejudice in a Decision mailed on May 15, 2003. The Dismissal required a copy of applicant's postcard receipt.

The instant petition

In response to the Dismissal, Petitioner files the instant renewed petition and includes a copy of the return-receipt postcard acknowledging receipt of 29 pages of specification filed on February 1, 2000.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 29 pages of specification filed on February 1, 2000. Petitioner has also re-submitted page 7 of the specification with the instant petition.

¹Petitioner provided a copy of his patent application mailing card; however, the mailing card did not contain the USPTO date stamp indicating receipt herein.

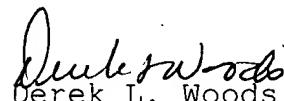
Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self-addressed postcard properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the postcard in the outgoing mail. "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

The petition is **granted**. The Notice of Incomplete Nonprovisional Application, mailed April 4, 2000, is hereby withdrawn.

No petition fee has been charged, and none is due.

The application will be returned to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of February 1, 2000, using the original application papers filed, along with page 7 of the specification filed on November 13, 2002. The Office record should reflect that 29 pages of specification were present on filing.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.


Derek L. Woods
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Office of Petitions